

**ORDINANCE NO. 2022-**

**AN ORDINANCE** amending Section 8.72.040 of City of Yakima Municipal Code Chapter 8.72 Excavations in Public Rights-Of-Way to specify that an applicant's indemnification obligation includes any act or omission by the applicant.

**BE IT ORDAINED BY THE CITY OF YAKIMA:**

**Section 1.** Section 8.72.040 Conditions of permit of the City of Yakima Municipal Code is hereby amended to read as follows:

**8.72.040 Conditions of permit.**

A. The applicant is responsible for the permit and the traffic control plan. The permit covers the general contractor's subcontractors as long as such subcontractors are not excavating in the public right-of-way.

B. The excavation permit application form and submittal requirements shall be in such form as prescribed by the city. The following information shall be required for application:

1) General.

i. The name and residence or business address of the applicant, including the applicant's state contractor's license;

ii. The location and approximate area of the excavation;

iii. The purpose, a plan or drawing, and a schedule for the proposed period of excavation;

iv. A traffic control plan;

v. Insurance and bond;

vi. A plan showing the specific location and area of the excavation, including the dimensions of its length and width, and any other information that may be deemed by the city to clearly explain the work.

2) The applicant shall pay fees as determined by YMC 8.72.070.

i. No fee or requirement authorized or imposed pursuant to this chapter shall be construed to affect or alter in any way any obligation of public and private utilities with facilities installed in any public right-of-way to relocate the facilities at no cost to the city, in the event that relocation is required by the city to accommodate public safety within the public right-of-way. Any directive must comply with RCW 35.99.060, Relocation of Facilities—Notice—Reimbursement.

C. The permittee shall, at a minimum, be responsible for public safety as follows:

- 1) Comply with all current federal, state and local safety regulations and all federal and state disability laws including those requiring an accessible path of travel.
- 2) Utilize appropriate traffic control, per the Manual on Uniform Traffic Control Devices (MUTCD), at all times for the duration of the permit.
- 3) A legible traffic control plan shall be included with all permit applications by the applicant unless a traffic control plan has already been submitted and approved.
  - i. Traffic control plans shall be designed and drawn, using MUTCD standards, by an American Traffic Safety Services Association (ATSSA), or equivalent certifying entity, certified traffic control supervisor.
    - a) A “training” grace period of 90 days, from the date the ordinance codified in this chapter is enacted, will be allowed for persons designing and drawing traffic control plans to be certified.
- 4) Excavations shall not be left unprotected at the end of a shift unless continuous shifts are planned.
  - i. Backfill, steel plates, security fencing and other safety options may be considered on a case-by-case basis by the city.
  - ii. Barricades, warning tape and plastic fence are not acceptable alternatives.

D. The permittee shall designate an employee responsible for the installation, maintenance and removal of barricades and warning signs, as required by the approved traffic control plan.

- 1) Barricades shall not be placed on sidewalks, pedestrian or bike paths, or dedicated bike lanes unless said pathways are permitted to be closed.
- 2) Barricades, including supports, shall be moved outside the clear zone when not in use.
- 3) The city will inspect barricading for compliance with approved traffic control plans as it deems necessary.
- 4) Barricades and warning signs shall be removed from the right-of-way promptly at the completion of the work.

E. All flaggers shall be trained and certified by a training agency normally engaged in the business of flagger training. Flaggers must show certification cards on request. Approved safety wear is required.

F. The permittee shall be responsible for the utility location service, surface (asphalt, concrete, other) cut, excavation, backfill, compaction, surface replacement, testing, any necessary remedial work, and materials incorporated in the work.

G. Indemnification, Hold Harmless, Insurance and Bond.

- 1) Indemnification and Hold Harmless.
  - i. Applicant agrees to protect, defend, indemnify, and hold harmless the city, its elected officials, officers, employees, agents, and volunteers from any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings and all judgments, awards, costs and expenses (including reasonable attorneys' fees and disbursements) arising out of any act and/or omission of the applicant, its officers, employees, agents, volunteers and/or subcontractors, relating to the issuance of a permit to applicant pursuant to Chapter 8.72 YMC , and/or the performance of work done pursuant to a permit from, or contract with the city.
  - ii. Nothing contained in this section or this contract shall be construed to create a liability or a right of indemnification in any third party.
- 2) Insurance.
  - i. General Requirements.
    - a) The applicant shall obtain the insurance described in this section from insurers approved by the State Insurance Commissioner pursuant to RCW Title 48. The insurance must be provided by an insurer with a rating of A-: VII or higher in the A.M. Best's Key Rating Guide, which is licensed to do business in the state of Washington (or issued as a surplus line by a Washington surplus lines broker). The city reserves the right to approve or reject the insurance provided, based on the insurer (including financial condition), terms and coverage, the certificate of insurance, and/or endorsements.
    - b) The applicant shall keep this insurance in force during the term of the affected work and for thirty days after the physical completion date, unless otherwise indicated (see subsection (G)(2)(c) of this section).
    - c) If any insurance policy is written on a claims-made form, its retroactive date, and that of all subsequent renewals, shall be no later than the effective date of this permit. The policy shall state that coverage is claims-made, and state the retroactive date. Claims-made form coverage shall be maintained by the applicant for a minimum of thirty-six months following the final completion or earlier termination of this permit, and the applicant shall annually provide the city with proof of renewal. If renewal of the claims-made form of coverage becomes unavailable, or economically prohibitive, the applicant shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to the city to assure financial responsibility for liability for services performed.
    - d) The applicant's and all subcontractors' insurance coverage shall be primary and noncontributory insurance as respects the city's insurance, self-insurance, or insurance pool coverage.
    - e) The applicant shall provide the city and all additional insureds with written notice of any policy cancellation, within two business days of their receipt of such notice.

- f) Upon request, the applicant shall forward to the city a full and certified copy of the insurance certificate.
  - g) The applicant shall not begin work under the permit until the required insurance has been obtained and approved by the city.
  - h) Failure on the part of the applicant to maintain the insurance as required shall constitute a material breach of permit, upon which the city may, after giving five business days' notice to the applicant to correct the breach, immediately terminate the permit.
  - i) All costs for insurance shall be the responsibility of the applicant.
- ii. Additional Insured. All insurance policies, with the exception of workers' compensation, shall name the following listed entities as additional insured(s):
- a) The city and its elected and appointed officials, officers, employees, agents and volunteers.
  - b) The above-listed entities shall be additional insured(s) for the full available limits of liability maintained by the applicant, whether primary, excess, contingent or otherwise, irrespective of whether such limits maintained by the applicant are greater than those required by this permit, and irrespective of whether the certificate of insurance provided by the applicant pursuant to subsections (G)(2)(iv) and (v) of this section describes limits lower than those maintained by the applicant.
- iii. Subcontractors. Applicant shall ensure that each subcontractor of every tier obtains and maintains at a minimum the insurance coverages listed in subsection (G)(2)(v) of this section. Upon request of the city, the applicant shall provide evidence of such insurance.
- iv. Evidence of Insurance. The required certificates of insurance in subsection (G)(2)(v) of this section shall clearly state who the provider is, the coverage amount, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this contract or permit. The policy shall name the city, its elected and appointed officials, officers, employees, agents and volunteers as additional insureds, and shall contain a clause that the insurer will not cancel or change the insurance without first giving the city prior written notice. A copy of the additional insured endorsement will be included with the certificate. The insurance shall be with an insurance company or companies rated A : VII or higher in Best's Guide and admitted in the state of Washington (or issued as a surplus line by a Washington surplus lines broker).
- v. Coverages and Limits.
- a) Insurance.
    - a. At all times during performance of the services, applicant shall secure and maintain in effect insurance to protect the city from and against all

claims, damages, losses, and expenses arising out of or resulting from the performance of this contract or permit. Applicant shall provide and maintain in force insurance in limits no less than that stated below, as applicable. The city reserves the right to require higher limits should it deem it necessary in the best interest of the public.

b. Commercial General Liability Insurance. Before this contract or permit is fully executed by the parties, applicant shall provide the city with a certificate of insurance as proof of commercial liability insurance and commercial umbrella liability insurance with a total minimum liability limit of one million dollars per occurrence combined single limit bodily injury and property damage, and two million dollars general aggregate. The aggregate limit will apply "per job" or "per project." The policy will include Washington stop gap (employer's liability) coverage.

b) Commercial Automobile Liability Insurance.

a. If the applicant owns any vehicles, before this contract or permit is fully executed by the parties, applicant shall provide the city with a certificate of insurance as proof of commercial automobile liability insurance and commercial umbrella liability insurance with a total minimum liability limit of one million dollars per occurrence combined single limit bodily injury and property damage. Automobile liability will apply to "any auto" and be shown on the certificate.

b. If the applicant does not own any vehicles, only "non-owned and hired automobile liability" will be required and may be added to the commercial liability coverage at the same limits as required in that subsection above entitled "Commercial General Liability Insurance."

c) Workers' Compensation. The applicant shall comply with workers' compensation coverage as required by the industrial insurance laws of the state of Washington.

3) Bond.

i. The applicant shall provide a minimum of \$10,000 bond to assure successful completion of the permitted work. The city may use this bond to complete unfinished work or to correct any damage to existing infrastructure that is caused by the permittee.

ii. The bond may be written for a single event, a specific duration or it may be evergreen.

iii. The city reserves the right to request additional bonding should it be determined that the amount of the work or risk exceeds the capacity of the bond.

iv. If the bond is for a single event, the bond shall be returned to the permittee upon successful completion of the work, as determined by the city.

v. This requirement is not in addition or instead of the bonding/insurance requirements for a city capital improvement project.

H. Roads less than five years old can be cut, but will cost one hundred fifty percent of restoration fee with no PCI discount.

I. The permittee shall notify the city upon completion of the work.

J. The city will provide any necessary inspections, during normal business hours, at the applicant's expense. Should the permittee request inspections outside normal business hours, or should additional inspections be necessary to ensure public safety, the permittee shall pay for all additional inspection costs, including overtime costs.

K. Except as otherwise expressly provided herein, all costs of complying with this chapter shall be borne by the applicant/permittee.

L. Upon receipt of a complete excavation permit application package, the city shall determine and set forth all requirements, approve or disapprove the application, and, if approved, sign and return it to the applicant with a permit number.

- 1) Each permit will state the estimated start and completion date of the permitted work.
  - i. One to thirty days (one hundred dollars): permit.
  - ii. Thirty additional days (one hundred dollars): permit extension.
- 2) The city may grant permit extensions if requested by the permittee.
  - i. The permittee must request the permit extension at least twenty-four hours prior to the stated completion date of the permit.
  - ii. Additional fees required by the requested extension must be paid prior to the issuance of the extension.
- 3) The city may modify the permit if circumstances or conditions appearing after the work is started make it impossible, dangerous or excessively inconvenient to the traveling public for the permittee to comply with the requirements of the permit.
- 4) No person in violation of any requirement of this chapter shall be issued an excavation permit, nor shall any contractor or agent apply for or be issued an excavation permit on the person's behalf, until the outstanding violation is corrected.
  - i. The foregoing requirement is in addition to any penalty or remedy for violation that may be imposed or sought by the city at law or equity. (Ord. 2014-015 § 1 (Exh. A) (part), 2014).

**Section 2.** This ordinance shall be in full force and effect 30 days after its passage, approval, and publication as provided by law and by the City Charter.

**PASSED BY THE CITY COUNCIL,** signed and approved this 19<sup>th</sup> day of July, 2022.

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Janice Deccio, Mayor

ATTEST:

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Sonya Claar Tee, City Clerk

Publication Date: \_\_\_\_\_

Effective Date: \_\_\_\_\_